

U.S. SMALL BUSINESS ADMINISTRATION

Regulatory Enforcement Fairness Hearing

Providence, RI

May 1, 2007

PROCEEDINGS

[START TAPE 1 SIDE A]

MR. MARK HAYWARD: Good afternoon everyone, and thank you very much for coming forward today to our hearing. This is an official hearing of the US Small Business Administration Office of the National Ombudsman.

My name is Mark Hayward, I'm the District Director of the United States Small Business Administration here for the State of Rhode Island and we welcome you here to this hearing. I'll be introducing the gentleman on my left in one second, but, you know, the old adage is I'm from the government and I'm here to help you. Bill Munger hears this all the time.

But, truly the United States Small Business Administration is that agency. We are the most entrepreneurial of agencies in the federal family, and it's our responsibility to not only start small businesses, help people start small businesses, but also to ensure that they thrive and they grow.

And part of that is every business has some kind of regulation that's attached to it. We are very cognizant of that and in doing so one of the aspects of the United States Small Business Administration is the Office of the National Ombudsman.

Jose Mendez is here from Washington. We are very appreciative for him coming up and for establishing this State today. But as the Office of the National Ombudsman, we have the opportunity to hear what issues are effecting the small businesses not only of Rhode Island or in this case all of New England and to put it on the record and to try to resolve some of those issues. So, we thank you very much for being here and we will do the introductions with everybody in a second.

It's a pleasure to have Jose come up here, and I am sure that he will bring back to Washington any and all complaints and concerns that you have and will ensure that those complaints and concerns are also addressed. And that's the great thing about this -- the way of the Office of the National Ombudsman works.

And actually, the assistance is given through individuals who are appointed to the Board of the RegFairness Board and we are very fortunate here in the State of Rhode Island to have the Honorable Leo Blais. He is not only a small business owner, the owner of Petuxic Valley Infusion and Care Center and Currentry, but he is also a member of the General Assembly. So he gets to see this not only as a small business owner, but also as a legislator. So, Senator Blais, we are

very happy that you are with us today.

SENATOR LEO BLAIS: Thank you.

MR. MARK HAYWARD: And we will be cheering this hearing. Before we -- I turn the mike over to Senator Blais what we would like to do is just have everybody in the audience introduce yourself so we know who is here and who the members of the federal family are here. And we will start right here with Norm.

MR. NORM DERAGON: I'm Norm Deragon, I'm with [inaudible] Small Business Administration [inaudible].

MR. MARK HAYWARD: Can you speak up and make sure that in the back so that we can hear you.

MR. BILL MUNGER: I'm Bill Munger, owner and operator of Connecticut [inaudible] Marine Services in Jamestown.

MS. ADELE PIETRANTONI: I'm Adele Pietrantonio, I'm the regional pharmacist for the Medicare office in Boston.

MR. DON VIVENZIO: I'm Don Vivenzio, I'm with the [inaudible].

MS. ANNE SKORUPSKI: I'm Anne Skorupski, I'm with the [inaudible].

MR THOMAS HICKS: Good afternoon, I'm Thomas Hicks from the U.S. Department of Labor. [Inaudible] program [inaudible].

MR. JOHN AUGUSTINE: John Augustine with the USDA [inaudible].

MS. LENNEA CEDERGREN: I'm Lennea Cedergren here with the Internal Revenue Service here in Providence.

MS. ODETTE TURENNE: I'm Odette Turenne, also with the Internal Revenue Service. I'm [inaudible].

MR. SANDY LPPOVITZ: Sandy Lupovitz, Rhode Island Bureau of Investigation and Protection.

MR. PAT GRIFFIN: I'm Pat Griffin, I'm the area director of the Occupational Safety & Health Administration in Rhode Island.

MR. LAWRENCE CASEY: My name is Lawrence Casey, I'm with Aqua Science one of international water [inaudible] Rhode Island [inaudible].

MR. JOE WYNNE: Hi everybody. My name is Joe Wynne, I'm the Area Manager with the IRS [inaudible] title. State holder liaison in the field and we specialize in small business self-employed community defined as [inaudible] businesses with under \$10 million in assets. We cover [inaudible] states, I sit in New Haven, Connecticut.

MS. PAT SLATE: I'm Pat Slate, I'm the [inaudible] coordinator for the Wage and Hour Division of the U.S. Department of Labor and it's a pleasure to be here [inaudible].

[CROSS TALK]

MR. LARRY WELLS: Good afternoon. I'm Larry Wells, I'm with the U.S. Environmental Protection Agency, New England Regional Office, which is out of Boston and I'm a compliance assistant coordinator.

[CROSS TALK]

MR. RENE SANCHEZ: Good afternoon. I'm Rene Sanchez, I'm a senior federal officer with the U.S. Equal Employment Opportunity Commission out of Boston [inaudible].

LINDA: I'm just a guest [inaudible] my name is Linda.

MALE VOICE: Thank you Linda.

MS. KAREN WALL: Karen Wall, Secretary of State's Office.

[CROSS TALK]

MS. SHERRI CARRERA: Sherri Carrera, [inaudible] Rhode Island Economic Development.

MALE VOICE: Eli?

MR. ELI ZUPNICK: Yes. Eli Zupnick, Lt. Governor Robert's office.

MR. MARK HAYWARD: Great. And thank you everyone for introducing yourself. And Senator Blais you are very accustomed to hearings in the State Senate, so I admirably turn this [inaudible] body over to you. And I ask if I can take my leave.

[CROSS TALK]

SENATOR LEO BLAIS: What we would like to do first is just do a quick review of a PowerPoint presentation that the Ombudsman's Office has been kind enough to provide, so we can explain it a little

better to the folks who aren't familiar with the process, what we can do and what we can't do.

The first thing is that the -- the Ombudsman's office is a one of two sides of the regulatory embossment [phonetic] piece that helps [inaudible] small businesses. So you have the Office of Ombudsman. They intercede after there is a problem. You have a knock at the door, there is some federal regulator there. Hi, you did something wrong, we think you may be did something wrong, here is a fine, have a nice day. The Ombudsman's Office is then able at that point to intercede on behalf of the small business.

The second piece of the SBA Office is also the Office of Advocacy. Its head is the chief council who is Tom Sullivan appointed by the President. The only SBA employee who is allowed under law to testify before our congress. They get involved during the time the regulations are being proposed.

So, with the SBA's office, which was created by the 1996 Small Business Regulatory Enforcement Fairness Act sponsored by Senator Kit Vaughn [phonetic] from Missouri, they are able to get involved if they know there is an issue coming at advocacy. And once their regulations are passed, the Ombudsman's Office is there to help if they can.

The President has been very forceful in requiring or recognizing that regulatory enforcement costs money. It has the ability to paralyze small businesses and give the SBA's commitment to help small businesses grow because the economic [unintelligible] not only of our state in Rhode Island or New England, but the entire country.

And you could see that he in his State of the Union Address specifically identified that we have to free small businesses from needless regulation, and that's what we are here to do today.

So, the commitment from the Ombudsman's Office is not only to look at the state of regulations as they are to limit unfair regulation to help to waive or reduce any civil penalties, provide voluntary compliance assistance. OSHA has got a great program for people who want to get involved with kind of self-policing themselves before they get the knock on the door.

And the bottom line is to help the small businesses survive by eliminating the time and dollars it costs to comply with -- with these regulations.

So, how do we help? There are ten SBA Districts throughout the United States. We are in Region 1, which is not only number one

because we are here, but it's how it's numbered. Right now there are two members of the Enforcement Board and it's a constant replacement of people, so we have vacancies from all over New England. If you have acquaintances you want to get involved, let us know, we'll be happy to bring their names forward.

When we conduct a hearing like this, we are here to receive your testimony and your comments or your concerns. And then what happens to it? It gets sent down to the office. It gets used to identify the agency involved and to get the answer to the concern raised by the small business. It's here to provide a we want to help you attitude instead of a gut you attitude.

And again, it's kind of like having a big uncle in Washington, D.C., who can help cut through the red tape and get an answer to a problem because we all know how easy it is for small businesses to get tied up in the red tape system.

And then the Ombudsman's Office actually prepares a report card, which lists how effective was the agency's response to a concern or a series of concerns made to them. Was it timely? Was the answer complete? Did they get back to the Ombudsman's Office? Were they able to solve a problem for the small business?

And a number of factors and they actually get a report card every year that goes to every member of congress. And if you have the time, you can access the [unintelligible] reports on line and see how the agencies respond to these comments.

I have been involved for, I think, four or five years now and it has been striking to me how seriously the agencies have grasped the importance of getting involved with the Ombudsman's Office and have even identified people who are the point people for complaints like this.

A gentleman from the Department of Labor, I think he said, every hearing that I have ever been to in New England and they are here to make sure that if there's a DOL issue, they can get right to the source and have it resolved.

If you are a small business, a small government entity, or a small non-profit as defined by the [unintelligible] statute, you are able to petition this entity to have your comment taken back to Washington. Right now in this environment, we can only act on federal regulations. Sherri Carrera, in the back, is the State Semi-Ombudsman because the Assembly after a year of [unintelligible] put a state reg flex [phonetic] bill in place.

So, if you have a problem with a state agency you see Sherri and they can also intervene and make an agency at the state level do an analysis of what it's going to cost to comply with any regulations.

And if you are a small business or an entity involved in federal compliance for enforcement, so if somebody came knocking at the door and they want to give you \$100,000 fine and you are a small business, you fit the category, we can at least bird dog the Ombudsman's Office in Washington can bird dog the complaint for you.

And what does it mean to be unfairly regulated? Having the department of mines come to your silver mine once a week to do an inspection on whether or not you lubricated the gears on your elevator [phonetic].

Excessive or unfair fines for penalties because you're elevator [unintelligible] gears aren't greased, you get a \$500 fine for not documenting that they were greased. By helping to remove or eliminate confusing paperwork or federal employees who haven't answered your comments or concerns about why are you doing this to me, and any threats, retaliation or unprofessional behavior they're -- the people in the field are held accountable by the Office of Inspector General who have no sense of humor whatsoever for federal employees being, you know, retaliatory or threatening. Their job is to provide regulatory enforcement and that is it, but sometimes people get carried away that's why we are here.

The report to congress as we mentioned summarizes the office's activities over the year. Identifies the kind of top ten of what people are commenting about. And what best practices we have garnered from getting involved in these specific industries. And, again, we rate the agencies on time limits, quality, response, non-retaliation policy, and non-retaliation in practice.

Their compliance assistance whether they come to hearings like this and whether their notifications are in writing, so all of these are the factors that are used by the ONO Office to rate the agencies as to how they're doing their job.

You can submit a comment on line, you can submit in writing, or you can do it here at hearing. This is a snapshot of the [SBA.gov/ombudsman's](https://www.sba.gov/ombudsman) website where you can fill in the blanks. You provide an explanation of what your concern is, you site the specific citation letter or order that you are being effected by. And if you have it, the contact name of whoever you are dealing with at the agency is to let them get right to the source and find out what the problem is.

On the website there are three choices for privacy. There are

three choices for privacy allowing full disclosure of your identity as a small business let's the Ombudsman intervene on your behalf rather than keep it a big secret. He can actually say I'm calling on behalf of Sunny Vale Biscuit Company and this is what their problem is.

The disclosure is fully public. It's fully disclosed of a public. It's disclosed to the federal agency and these are the three privacy areas. The top one is what you want to do. Make it fully disclosable in public so that the Ombudsman's Office can intervene. You can also make it just disclosed to the Ombudsman or to the Regional Board and that makes it very difficult to help solve your problem.

And the middle one is only a response to your case. It may not be able to help other people in your industry so situated. So, if you are willing to put your name on the line, you know that the agency is not allowed and it will be severely punished if they retaliate against a small business. It's more better, if you will, to have the disclosure made public to allow the office to do it's job and to get to the bottom line.

Written comments are [unintelligible]. Full disclosure of your comment it's a faster and better response. And, again, give us the names, the dates, the location, what the problem is, and who you have been dealing with so we can get to the source and get the problem identified quickly.

And ask us or tell us what you would like to see done. You are having comment, the inspectors don't like the type of flour you are using you have been using it for 40 years, it's a good flour, you would like them to allow this flour, which you have been importing from Finland for 50 years to be allowed as a food additive in the United States.

Tell us what you would like to see the outcome to be. Because a lot of times you know what you would be happy with if the agency was able to do that. They may already be able to do that, you don't know it. But unless we know what you are seeking, it's very difficult to get the response.

Do not send any legal briefs or court papers. We are not able to handle them or get involved directly in any litigation process, so just the facts. Give us -- tell us what's going on and leave the court stuff out. You should still continue to do any legal intervention that you have been involved with because that is your right as a citizen in a small business, but the office does not get involved.

Consult your attorney before contacting us if you are in litigation. Again, because we can't do anything with litigation.

The Ombudsman's Office cannot do the following, although we would like to some days. We can't change, stop, or delay enforcement. We can't process comments not involving federal regulations of federal agencies. But there are many times when we can send it to the right people. We may not be able to have direct activity because of the nature of the comment. For instance, we see a lot of times -- I filed -- I was in [unintelligible] and I filed for a disaster loan. It's been nine months or a year, nobody has gotten back to me, what's going on.

The Office of the Ombudsman's can't do any of that because it's not an enforcement action, but they can take your comment and send it to the SBA Disaster Funding Office and let them get involved, you know, kind of a referral source to get to the right people in the business.

We have no ability to secure government contracts, so the big thing is getting small business set-asides for the Department of Defense on a [unintelligible] data doing what they are supposed to, but it's a whole other story for another day. But, again, we can refer that to the purchasing people at SBA to help get that engaged.

And we are not here and cannot provide any legal services or assistance. We are just kind of the cut through and let's get the answers that the small business needs.

We hold these regional hearings and we have had them all over New England as far north as Bangormaine [phonetic] and as far south here in Rhode Island. We try to cover or we rotate around through the New England state so that we make it easier for people with small businesses to come testify and give us in real time what their concerns are.

In Maine we have a lot of people in the lumber industry, in the fishing industry that had concerns. Massachusetts it was the marine fisheries people were in because they had concerns about the size of the fluke and the codfish catches, and Maine also had concerns about the lobster fisheries.

So, it really is a mosaic of the businesses that we have throughout New England that we hear from in these forums, and it's very interesting to hear how people are handling these issues.

We then follow the comments of the Ombudsman. We participate in these hearings and we also are able to give our two sense back to the Ombudsman as they are writing their report to congress to provide additional information from our interactions with small businesses to let congress know how good a job the office is doing or how we are able to be effective to cut through the red tape of these

small businesses.

The two people right now are myself and Kathy Ware [phonetic] who is the acting chair for Region 1. Kathy is way up there in Maine and I'm in Rhode Island. I have been privileged to be the chair for Region 1 [unintelligible] already. I have enjoyed my time with the SBA and with Director Hayward, and Norm, and Jose and Elli and everybody and also Ombudsman Owens.

They are very committed to this project. They believe in the abilities of the office to help small businesses and that is why we are here today. Anybody who wants to call me feel free to write my number down. You can get my information also off the SBA website. And if we don't have the answer, we would be happy to get at the people that can help.

O&O [phonetic] tracked \$4 billion dollars in waived penalties and reduction of fines by federal agency just in the last two years. As we see on the media it's billing with the B. That is a huge amount of saved money that can be reinvest directly into the economy.

IRS determined reasonable cause and abated penalties to a [unintelligible] business for failure to file his tax return at the same time he lost his business. The Department of Defense claims safety violations closed down a plant, the management agency resolved the issues and the plant resumed reduction.

When you have the federal marshals and the inspectors at your door with the guns and the jackets with the writing in the back, it's a pretty scary time.

Department of Labor claimed harassment of an owner and employees in Indianowa [phonetic]. In Mississippi the [unintelligible] investigated [unintelligible] found that the small business acted properly and no act against the company was warranted. These are just some of the highlights of activities that the office has done. Again, to make sure that the small businesses are given their fair shake in the regulatory area.

These are all the websites that we -- I kind of touched on. The top three are the important ones for the SBA. SBA.gov and then SBA.gov/ombudsman that gets you here. SBA.gov/advo is the office of advocacy. They have a nice e-mail summary of what they are working on if you want to keep an eye on any coming regulations that the department is involved with.

And then all the other ones are the compliance and then the SBA Rhode Island one at the bottom has the numbers for people in the

regional office here in Providence, which would be Director Hayward and Norm Deragon and the other folks who staff the office.

Again, you can call the office directly also there is the e-mail contacts, the 888 number is 888-REGFAIR, which is a regulatory fairness peace it's an easy one to remember. And the staff there are very responsive to the needs of the small business as well.

I want to thank you for coming. I want to thank the agencies who sent representatives down and as we go forward through the comments by the small business, I would be interested in hearing any concerns that you have as we go through them.

Are there any questions on the PowerPoint or on the process before we begin? Okay. Why don't we then start with Sandy Lupovitz from RIBI Security. If you want to come up to the mike and give us your comments. We would be happy to take them forward.

MR. SANDY LUPOVITZ: My name is Sanford Lupovitz. I'm vice-president of Rhode Island Bureau of Investigation, frequently referred to as RIBI Security. RIBI is a family owned business since 1980 headquartered in Providence. My son, Ben, is the president and CEO.

Our primary business is providing security guard service. We cover 8,000 hours of guard work each week at approximately 60 locations in Rhode Island and Massachusetts with a compliment of 250 to 275 employees.

On September 23rd, 2005, -- let me just plug in we also do investigation work, executive protection, consulting and all of this pertaining to the security industry.

On September 23rd, 2005, I received a phone call from an investigator from the U.S. Department of Labor Wage & Hour Division. I was informed that Wage & Hour Division would be conducting an audit of our payroll records.

On September 22nd, 2005, a wage & hour investigator and I will refer to him as WHI in the henceforth, came to our office. He presented his credentials, furnished literature, and explained the procedure. We were advised that WHI does not need a subpoena. No problem to us, we had no reason to object nor to be concerned.

The purpose of the audit was to check for violations relative to minimum wage, unpaid wages, overtime, child labor, time and payroll record keeping. There would also be a check on compliance with the Fair Labor Standards Act, Davis Bacon Act, Walsh Heeley Public

Contract Act, Service Contract Act, and Family Health Leave.

The audit would cover a two year period, September '03 to September of '05 and include current employees, as well as those who had left the employ of the company. In answer to our question we were informed that the reason for the audit was confidential.

On November 21st of '05 following completion of the audit, I met with the WHI in our office. He thanked me for being cooperative, furnished additional literature, and then presented a copy of the U.S. Department of Labor summary of unpaid wages that detailed unpaid overtime wages for nine employees in the amount of \$23,088.80.

The nine employees fell into three job categories, field manager, site supervisor, and training director. The WHI pointed out that the amount could have been substantially higher if not for his recommendation that fines and penalties be waived. The waiver was a result of our total cooperation during the audit.

Additionally, in the opinion of the WHI all of the violations cited were unintentional. He added that this could be a result of the condition that some regulations enforced by the Department of Labor are contradicted by other laws causing confusion on the part of employers.

Adding to the confusion the Department of Labor statement that when the state laws differ from the federal FLSA laws, an employer must comply with the standard most protective to employees. I asked how one makes that determination. The answer was, that depends. Whatever that means.

The audit showed that other than the nine, all employees had been paid properly, records were in order, correct payroll procedures for federal sites had been followed, condition of the various labor contracts had been met.

We considered the nine employees as exempt from overtime because of the positions they held. The WHI rejected overtime exemptions for two reasons. One, the nine did not have the authority to hire and fire. Second, the nine were paid on an hourly basis. The WHI was asked to put the citations for each employee in writing so that we could better understand the issues, he declined. The meeting was adjourned.

I decided to research the issue and went to the wage and hour publication 1281 to review regulations Part 541, which deal with overtime -- deals with overtime exemptions. I found that the nine should be overtime exempt according to subject B541.100 general rule

for executive employees. According to this regulation an employee is exempt when one, when their salary is not less than \$455 per week that made it. Whose primary duty is the management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision. We thought we complied.

Who customarily and regularly directs the work of two or more other employees. Not a question here. Who has the authority to hire or fire or -- and this was left out by the WHI when he spoke to me. Whose suggests and recommendations as to hiring, firing, advancement, promotion or any other change of status to other employees are given particular weight.

Due to the nature of our business, the hire fire process is not left to the one person. Applicants are interviewed, employment history is checked, Bureau of Criminal Investigation documents are drawn from the Attorney General's Office. Citizen status is checked and verified. A second interview is conducted, a termination is processed by a committee after thorough investigation. It's not left to one person.

With one exception, the nine did not work in the office and could not be hiring and firing in any event. All nine met these conditions. Field managers, for example, take over operation of the company from 4:00 p.m. to 8:00 a.m. weekdays around the clock weekdays and holidays.

They visit client sites, inspect employees on duty, check shift and incident reports. Responds to reports of unusual incidents like an accident or a major equipment failure. Meet with customer representatives, make schedule and procedure changes as needed. Evaluate effectiveness for security service, as well as individual guards. They make sure that what RIBI was contracted to do is in fact being done.

When asked to reconsider his finding on the basis of this information, the WHI stated that the field managers were actually nothing more than glorified dispatchers. The profound observation by someone was never operated a security guard company.

One of the nine, for example, with the company 17 years is a site manager who supervises 22 employees covering 650 hours a week. Hardly a glorified dispatcher. The WHI was invited to ride with our field managers to assess their level of responsibility, declined.

With respect to the question of paying of the nine on an hourly basis, our payroll system is based on hours. We do this to remain in compliance with Rhode Island Labor Statutes. "An employer must keep an accurate daily and weekly record for all employees. No one

including employees paid on a salary basis is exempt from this law. These records must be kept for at least three years."

My paycheck is based on a 40-hour week. When it goes into the payroll service it says 40 on the request for the check. The guard business is predicated on a by the hour basis. Quotations, profit and loss, schedules, pay rates, payroll records, and billing are all based on an hourly basis.

Eight of the nine were paid salary for a 48-hour week. When additional hours were worked that time he was paid for -- in addition to the salary. I may have confused [unintelligible]. They worked a 48-hour week for the salary. If they worked 49 hours they were paid for that 49th hour. This is a procedure approved by the Department of Labor.

The ninth person is on a flex schedule and can put in for overtime when it is deserved. The WHI decided that this person worked three hours overtime without overtime pay every week for two years and charged us as unpaid overtime and added it to the bill. He was right there is ambiguity when trying to interpret the wage and hourly regulations.

November 28th, '05 I again asked to be provided with written specifications about the citations, again denied. I asked for details about an appeal, not provided. I was advised that we would soon be required to respond with an agreement or refusal to pay. It was obvious that we were being treated within a presumption of guilt and without due process.

I received calls December the 2nd -- we were still in '05 now, December the 12th requesting our final decision about payment. The WHI stated that his boss wanted to know why so much time had elapsed without a response. The pressure was on. The locomotive was coming down the track and railroaded we had no way to get off. In the meantime, we found arithmetic errors in the audit. Substantial adjustment in our favor was then allowed.

Considering the possibility of additional error I asked for more time to go back over the figures, denied. At this point, I informed the WHI that we had decided to consult with a labor law attorney. We felt that we had been found in violation on the basis of technicalities rather than blatant disregard of the regulations.

After the attorney received and reviewed the case rather with me he felt that the findings of the WHI were debatable. He met with the WHI January 23rd, '06. Following his meeting with the WHI the attorney called to inform me of the results. The WHI had said that we

have a right to file an appeal with his supervisor in Hartford. The caution, however, that the appeal could very well be referred to federal court.

In addition, an appeal could result in cancellation of the penalties and fines waived at the beginning. The attorney was instructed to inform me that if we did not agree to pay the unpaid overtime by the end of the business day, January the 25th, that's two days later, he would file a refusal to pay [unintelligible] against RIBI.

He reminded us that litigation would be very expensive, lengthy, time consuming, and the outcome uncertain. The attorney advised that we should agree to pay, pay the overtime. Legal fees for an appeal and loss of waivers could very well cost more than the amount currently demanded by a DOL.

In essence, even if we won the appeal we could lose. I would like the commercial pay us now or pay us later. If we agreed to pay and we didn't.

The next day, January the 26th, '06, in accordance with the provision of the small business regulatory enforcement fairness act, I registered a comment with the SBA National Ombudsman on the form that you were showed here before -- the e-mail form.

I felt that the [unintelligible] enforcement procedures had been applied without due process. The Ombudsman passed my comment to the Department of Labor supervisory small business regulatory compliance advisor who is here with us. He suggested that our payments could be placed in escrow until such time as the [unintelligible] had been investigated. I thought that was a good idea. Put the money there, let' argue about it, but it didn't happen.

When I e-mailed for instructions I just didn't get them. The SBA Ombudsman requested DOL to investigate my comment [phonetic]. The results of the investigation were sent to me February the 21st, '07, slightly a year later. Eleven officials from the Department of Labor wrote and received copies of these reports.

The report was obviously sympathetic to the views -- to the viewpoints expressed by WHI information disadvantageous to the Department of Labor who suppressed the report contained acquisitions that RIBI was uncooperative. The report based on a self-investigation to me was a whitewash.

At no time during the period between when I filed the comment with SBA and when I received the results of the -- the DOL investigation in February was I contacted for a statement, a comment,

response, or elaboration on what was going on. That was disappointing to me. An Ombudsman rather suppose to consider both sides of a disagreement as Leo has pointed out.

Several months after the overtime due was paid we notice that the check issued to one of the nine was not cashed. We also noticed that this employee's performance, which had been satisfactory began to unravel. Failure to support -- failure to submit reports and payroll data female employees called to complain about this employee. Frequent use of profanity and racial slurs came from him. Refusal to attend field manager meetings, refusal to meet with management about these issues. This employee was fired for cause.

The next development was a letter from his attorney informing us that due to the wrongful termination he was to sue for \$50,000. They would settle for \$45,000. He claimed he had been terminated for having complained to the Department of Labor for an over -- for payment -- for non-payment of overtime wages. So now we knew where the whole thing started.

While DOL thinks we are violators, we think we were bullied. It is time for the SBA to take another look at how small business is treated by federal agencies, as well as what more could be done to prevent repetition of an experience like ours. If I could be helpful in this process, I'm willing to do that. That is my holler.

SENATOR LEO BLAIS: Just to clarify. So, you -- you put in an appeal in with the Department of Labor and they came back and said we stand by our decision, have a nice day?

MR. SANDY LUPOVITZ: We didn't appeal it.

SENATOR LEO BLAIS: You didn't appeal it?

MR. SANDY LUPOVITZ: No that was the point. If we appealed we were told it would then go to Hartford and probably federal court. And this is where the attorney said to us it will probably cost you more if you appeal pay it, get these guys off your back. I have seen this happen before, you are better off. It is a lot of money for us.

But, the decision was made and my son had a lot of input into it that we were better off in the long run. We have to run this business we are little guys. We can't sit in court -- federal court and have depositions go on and on and on with this thing then lose it.

The Department of Labor Wage & Hour are not easy people to deal with. Once they decide you broke the rules, it's over. And the other thing was that we didn't know about the Ombudsman until it was

too late. If you recall, I called you.

SENATOR LEO BLAIS: Yes.

MR. SANDY LUPOVITA: You helped. First of all, I said should I do this and you said yeah send me a -- send a comment to the Ombudsman, which I did. We had some exchanges [unintelligible] with Senator Chaffey's office. They put somebody on it. He called me back and he said they are not going to budge. There was really no place to go with this thing. And if someone is here from Wage & Hour I would like to hear from them.

If you get slapped with one of these and you have no place to go, no opportunity to defend yourself, and their regulations are that thick and they don't even know half of them, what do you do?

SENATOR LEO BLAIS: I want to thank you for taking the time to come see us Mr. Lupovitz [unintelligible].

MR. SANDY LUPOVITZ: Thank you for the opportunity.

SENATOR LEO BLAIS: Next, we would like to hear from Bill Munger from Conamicut Marine. Did I get that right? Conamicut Marine, sorry.

[CROSS TALK]

MR. BILL MUNGER: And, again, I'm Bill Munger, founder, president of Conamicut Marine Services. We are a marina boat yacht in Jamestown, Rhode Island. We are presently entering our 33rd year. We are a small family business. Roughly 35 employees in the winter time and about 60 employees in the summer time.

Back in 2004, we had a visit and examination by the Federal EPA. We are a facility that is, again, we are a marina boat yacht, but we are a bit different than most facilities in that a good portion of our facilities are inland. All together we have four separate properties all within a couple of miles of one another. Each property has a separate function, i.e., mechanic shop is in a spot, paint shop is a spot, store is in a spot and obviously the marina is at the waterfront.

When we got this visit I said to myself no problem we are very proud of our facilities. We are a proactive green company. We have a long history of utilizing best management practices to comply with environmental awareness. We employ a compliance consultant for our annual review and training.

We thought we were a great store to the environment. Additionally, we were recognized by EPA back in 1996 as a clean

marina, clear value award. We are still on their website. But close scrutiny by the EPA at this time revealed that we had some gaps in our paper trail.

We had a -- we had missed a training -- required training sessions with [unintelligible] back in '05, and then we had a -- our written storm water plan was not in order. Both of these were immediately rectified. And if I just back up a second I could give you an idea of what happens when you have an EPA visit. And they were cordial, again, the badge, we are from the government, we are here to help, not quite.

They visited each facility. They literally did a dumpster dive at each facility just to see what kind of stuff was in our dumpster. Every can comes off every shelf identify what it is. Soil samples at all locations, review all the manifests, review all the [unintelligible] ID numbers. They were also looking for a power wash permit of which to date the State of Rhode Island does not have.

They were looking at all our MSD sheets. How do we dispose aerosol cans, how do we dispose of fluorescent light bulbs and on and on and on. It was very extensive. It was several days in our facility. And I thought, again, that we were doing pretty well.

But, again, as I outline to you that we had paper trail deficiencies in the -- the result of this is that today EPA deals with these things that they are used to dealing with generating plants, power companies, coal mines, I don't know. But, they are just not familiar with, again, how fragile a small business is.

It's been a -- it's been a really -- we are not closed on this yet. Again, this goes back to '04. We are still negotiating fines. They are looking for enormous fines, things that we, you know, that we can't just write a check for in order to pay these fines. It means that we will have to somehow or other reduce our payroll in order to be able to come up with the money. It's really [unintelligible] been trying.

So, at the end of the day if you ask what I would like to see done and I think that's what was reiterated earlier. And, again, I would ask that, you know, and I'm speaking with, again, my experience is with EPA, to put a cap on the initial enforcement if there are indications of intended [phonetic] to compliance.

The second thing is, is provide a notice of alleged violation with a timeframe to comply. Possibly a state operated environmental compliance assistance program somewhat to the OSHA program. I give that five stars. We have also had a visit with OSHA last spring right there on our busiest time and it was a -- again, we had a short list. We

had a set of stairs that were too steep, we had a fire extinguished without a tag, we had an eye wash basin that wasn't close enough to the work area.

But we had a list of -- of shortcomings with them. The but is in this case is they gave us 30 days to fix it and if you couldn't fix everything in 30 days they would give you one extension. Well, we fixed the first list in 30 days. The stairway that was too steep I was still scratching my head what I was going to do with that, so I got the extension on that. At the end of the day we ended up taking the stairway out.

But the bottom line is, is the OSHA program was -- was firm, but friendly. And at the end of the day we were able to come clean with that without these enormous fines that's being handed out by EPA.

Lastly, if it could strengthen the outreach program of EPA, and I know Larry Wells is here today. He has done a great job with EPA, but it's still the things that -- that blew up in my face were not things that, again, were necessarily touched on by Larry. We had been a regular attendee at the EAP workshops. There had been -- I know I had attended two, I'm not sure how many [unintelligible] that's going on over the last five years with the marine industry in the State of Rhode Island, but we need to do more of that.

But, at the end of the day, the -- the present format that makes an example out of the first few companies to be cited with excessively high fines on certain violations is -- is really, really counterproductive to making us go forward.

So, that's my -- that's my tail [unintelligible] to [unintelligible].

SENATOR LEO BLAIS: Two things. One of the acronyms you spoke of was RRTA. Can you tell us what that is?

MR. BILL MUNGER: It's a resource recovery training and again this is required. We were on a 24-month cycle [unintelligible] that -- it's a refresher and the federal mandate it would be on a 12-month cycle for a refresher. And, again, then we call this annual training of which we, again, we -- we hire a compliance firm, same compliance firm has been with us for golly 15 years on this with the annual review [unintelligible]. So, that is another issue.

But, clearly the regs are not crystal clear on what we must comply to and, again, if you -- if you try to identify this they will immediately point you to the website, which, you know, anybody that has been to a [unintelligible] website is quite extensive. To pick through that to get a clear vision of where you need to be when is -- is

difficult.

And, again, it's pretty impossible to do as a -- again, to keep your business afloat and keep people employed and keep going forward clearly that is a primary mission, but we definitely have to be aware of all the other things we need to be up-to-date on too. So with that, I think most of us in the marine industry are -- will retain the help of a compliance firm, but even with that, you are not air tight to get through it.

SENATOR LEO BLAIS: And then revisit for us you said you were recognized by EPA as green marina?

MR. BILL MUNGER: Yes.

SENATOR LEO BLAIS: And when did that happen, and how did that happen?

MR. BILL MUNGER: Well, it was 1996. We were recognized as being a -- for having a boat storage and parking inland using [unintelligible] sanders, doing our repair work in a contained area not outdoors.

SENATOR LEO BLAIS: Take care of the fugitive dust regulations?

MR. BILL MUNGER: I'm sorry?

SENATOR LEO BLAIS: Take care of the fugitive dust.

MR. BILL MUNGER: Yeah. So our shortcomings here was, again, was -- our practice was -- was fine. Again, it was the -- again, it's back to the paper trail and, again, further made complicated because, again, as I said we are four separate properties. We are one business, but we are four separate properties not contiguous.

SENATOR LEO BLAIS: How many employees do you have total?

MR. BILL MUNGER: Well, in the summer time 60 and the wintertime we are still 35, 40.

SENATOR LEO BLAIS: And they are all split up in these areas, sites?

MR. BILL MUNGER: Yeah.

SENATOR LEO BLAIS: Are you a) willing to and be at liberty to share the general sides of the fines suggested by EPA?

MR. BILL MUNGER: Yeah. We are looking at \$55,000 for the [unintelligible] training and we are looking at \$50,000 for the storm water plan. So we are looking at \$105,000 that they want, you know, kind of now. They will give you up to a year -- six months with no interest they will give you up to a year with interest, but I still got a problem. I can't go to the bank and borrow \$100,000 without showing any new revenue.

I have to come up with \$100,000 somehow out of operations. Again, we are as most small businesses a hand to mouth, not, you know, everything we have is hanging on the wall or it's, you know, there is nothing in the checkbook to go do this so...

SENATOR LEO BLAIS: And this was the first time you had ever been inspected by EPA?

MR. BILL MUNGER: Yes. Well, we have had -- yeah we have had -- Larry has been to our facility in the past. And we have had -- that's the only other inspection.

SENATOR LEO BLAIS: So, in 1996, you were recognized as a clean agency, you're proud, you're happy, you think you're doing a good job, inspector walks in, oops you missed a training, which used to be every two years now it's every year?

MR. BILL MUNGER: No. It has been always every -- that was bad information from my compliance officer unfortunately. It is what it is, but that's, you know, I have to accept that. I was, you know, I was still at the end of the day it's my responsibility. The compliance that that [unintelligible] training is in fact federal law that it must be done every 12 months.

Clearly, if you had a conversation with the average boat yard in the State of Rhode Island they would still not understand what that is all about. I'm still at square one.

SENATOR LEO BLAIS: And then your storm water plan wasn't current? Was there one--

MR. BILL MUNGER: Storm water plan was non-existent because we -- essentially with all of our repairs that go on indoors nothing happens outdoors it doesn't matter still even though all repairs are done indoors it's still a requirement.

SENATOR LEO BLAIS: So you need a plan for storm -- you need a storm water plan that you will never use?

MR. BILL MUNGER: It's not about that.

[CROSS TALK]

SENATOR LEO BLAIS: I understand, but just to put into plain context so I have an understanding of this, you do everything inside.

MR. BILL MUNGER: Everything is inside.

SENATOR LEO BLAIS: Everything is contained.

MR. BILL MUNGER: Everything is contained.

SENATOR LEO BLAIS: There is point zero, zero, zero, zero, zero, zero, zero, zero, zero, one percent chance that something is going to get outside, but yet you have to have a storm water plan to address that?

MR. BILL MUNGER: Yeah. Everything is contained -- like you say everything is contained, but we still have to have a -- yeah.

SENATOR LEO BLAIS: Okay. And have you contacted the federal delegation about this?

MR. BILL MUNGER: I have not. You are my first stop.

SENATOR LEO BLAIS: Well, I would -- when you leave here today, I would have you call Senator Whitehouse's office, Senator Reed's office, and Representative Kennedy's office because I think you are in District 1 on that side of the bay.

And give them a copy of this because I'm not a marina guy, but it sounds like we need to have some attention paid to this at that site, so [unintelligible] I could easily -- you could easily have to fire three or four people out of a 60 person operation just to fund this on an annual basis never mind coming up with a lump sum payment.

So, we appreciate you taking the time to come to us and hopefully the EPA people are listening and maybe we can get them engaged. I know that certainly the federal legislators are very interested in these kinds of issues. I would also suggest you talk to Ken [unintelligible] at [unintelligible] Marine [unintelligible] and see if they have some guidance and can get them involved because it's something I think that needs to be addressed.

So, thank you for taking the time in sharing this with us and we will get this to Washington and get the ball rolling for you.

MR. BILL MUNGER: Thanks for listening.

SENATOR LEO BLAIS: Any time. That's the job. Next, we

would like to hear from -- everything else is read? Okay. Is there anybody else? Yes, sir in the back?

MR. LARRY WELLS: EPA, I do have some comments today.

SENATOR LEO BLAIS: Can you come up to the podium, please? And because we are recording, can you identify your name and where you are from?

MR. LARRY WELLS: Yes. My name is Larry Wells, I am with the U.S. Environmental Protection Agency, Region 1, which covers the New England area, and I just want to address the audience regarding -- in several areas actually.

First of all, marinas can cause quite a bit of environmental harm to the environment. It's very common that marinas are dealing with oil and fuel that could be very problematic from a pollution standpoint, as well as hazardous chemicals, toxic chemicals. We are talking about paints and solvents, antifreeze, waste batteries.

And also, marinas are typically located in a very unique situation and that they are often at the bottom of the basin. And so not only do the marinas have the potential to cause pollution, but they are also often recipients of pollution that is running down from the basin at this gathering point where marinas are typically located.

And it also causes a situation where it's important for a marina from a storm water management control standpoint. The other thing -- another thing I want to point out is that marinas are often in highly populated areas. They are typically located in our shoreline areas. And during the course of a year a very significant number of our population will be at a marina either as a result of living at a marina where we are seeing population increases in shoreline areas or visiting the marina to participate in recreational activities such as boating, fishing, swimming.

Also, I want to point out that for our New England regional office, we have been very active in terms of providing compliance assistance to marinas. In particular, over the last five years throughout the region we have done a number of workshops. We have come out with a number of guidance materials.

We have also come out with a regional marina website and a compliance assistance environmental management plan workbook, which helps the marina plan and track their environmental activities. And our regional offices work very closely with the Rhode Island DEM, as well as the Rhode Island Coastal Resource Management Council in terms of coming out with these assistance activities.

We have also had -- we have also done quite a bit of onsite visits. We call them assessment visits. I think what Bill was eluding to when I came to his facility it wasn't actually an inspection, it was an assessment visit, which is not nearly as vigorous as an inspection would be, but we -- we have done a good number of these to a significant number of marinas to help them as a compliance assistance activity. So -- and that's, basically it.

SENATOR LEO BLAIS: A question just to clarify something you talked about. The -- the witness before that was Mr. Munger, identified that all of his contaminant work is done inside within a closed system using, you know, dustless abrasions and then the light to reduce the production of any fugitive dust.

I'm just wondering why EPA would make the small business the steward or the custodian of storm water not produced on their property. See you talked about the storm water plan at that the marina or is that the bottom of the basin? That may or may not be true in this, but in generality I think everybody would agree that marinas are usually in a basin.

But why does EPA require the person at the end of the -- of the drain to be responsible for everything upstream? It seems, you know, if he was getting -- for the sake of arguments and I don't know this to be true, but you took a collection of rain water and you found traces of benzene in the rain water we all know that is a carcinogenic chemical and it is a pollutant. But if his business does not use benzene it came from somewhere else, why is he responsible for that?

MR. LARRY WELLS: Well, the marina is not necessarily responsible for it. Under the regulation there are certain criteria that if the marina fits that criteria then a storm water pollution prevention plan is required. And if they are actually a marina and they have a certain standard industry code that designates the facility as a marina and the do maintenance and repair work. And they have storm water on their property and it can flow into a point source then a storm water pollution prevention plan is required and they are required to get a permit.

SENATOR LEO BLAIS: But, again, they are not point source polluters if it's all inside.

MR. LARRY WELLS: If it's all inside, then what the marina needs to do and what they really need to make sure of is that it actually is all inside. Because -- and from my experience that is -- there is not a lot of marinas that do maintenance and repair work have captured everything inside.

If they do, they can apply for a no exposure permit instead of storm water pollution prevention plan permit. In this no exposure permit they are basically telling the federal government that none of their maintenance activities are exposed to the environment, and therefore, you know, under this permit they can operate, you know, with their maintenance work.

SENATOR LEO BLAIS: Is Mr. Munger able to apply for that if he meets the criteria?

MR. LARRY WELLS: Well, I can't speak to Mr. Munger's situation because that would be against, you know, our ethics rules. I could tell you broadly that any marina that could comply for a no exposure permit, you know.

SENATOR LEO BLAIS: And the other thing you talked about was the environmental assistance that you provide the workbooks for the marinas. How many of those workbooks were provided to marinas in Rhode Island on an annual basis?

MR. LARRY WELLS: Well, we actually make the marinas aware of it in our workshops. One of the things that I did mention that while we do send -- we have been sending letters out to the marinas periodically talking about, you know, our concern about the environment and making them aware of our assistance tools. And so we--

SENATOR LEO BLAIS: [Interposing] So, the EPA has a registration of all the marinas in Rhode Island?

MR. LARRY WELLS: We have a record of the marinas in each state and--

SENATOR LEO BLAIS: [Interposing] So, how often do you provide the environmental workbook? Annually, every six months? I mean, how often does the marina get the document that says here is what I'm supposed to know as a business owner?

MR. LARRY WELLS: Well, we -- through our compliance assistance work, our goal is to make sure that every marina owner is aware of the assistance tools that are available through our website, through our workshops, through our letters, through our relationship with the state, as well as coastal resource management council and the Rhode Island Trade Association, so we are very active.

So, there are a number of opportunities for a marina owner to learn about these tools.

SENATOR LEO BLAIS: But you don't send--

[CROSS TALK]

MR. LARRY WELLS: We don't mail it out, but we do mail the letter. We have mailed letters out that basically explains that, okay here is, you know, our new website, here is our environmental management plan workbook and here is where you could go to get those type of tools.

SENATOR LEO BLAIS: Okay. So, unless this businessperson believes he has a problem, he is never given anything by EPA like a general workbook or what we are looking for and the enforcement assistance [unintelligible]?

MR. LARRY WELLS: Well, actually he is actually given the information as to where to get that. So, as far as--

SENATOR LEO BLAIS: Yeah, but I'm saying as far as hi, here is what we are looking at, here is the book, you may, want to review it. You say you do send a letter that says if you want to know what is going on, go to this website.

MR. LARRY WELLS: Right. Yeah.

SENATOR LEO BLAIS: Okay. I appreciate you taking the time to explain what your agency is doing, and hopefully we can see about moving this comment to the office in Washington and getting some resolution. Thank you again for coming.

Is there anybody else who would like to testify who hasn't signed up that we don't have on the list? And your name, sir?

MR. DON VIVENZIO: My name is Don Vivenzio, I'm from Point Judith Marina.

SENATOR LEO BLAIS: Please come forward and just identify yourself into the mike again and we will be happy to listen.

MR. DON VIVENZIO: Hi, I'm Don Vivenzio from Point Judith Marina. I have not had a problem with the EPA personally with my marina. I am representing myself and the Rhode Island Marina Trade Association. We have been working with Mr. Wells and the EPA trying to solve some of the problems.

We have been informed by the EPA that the industry has been highlighted by the EPA and they will come and visit us and fine us. I think that--

SENATOR LEO BLAIS: Just to interrupt, that information came from [unintelligible]?

MR. DON VIVENZIO: That came from a seminar that we did have about a year ago at the University Graduate School of Oceanography. And we were told by the EPA that they were going to visit the marinas and they would fine us. As I go through my marina, and try to figure out the various problems I have I find it kind of overwhelming and I know that if I get a visit, I will have a fine especially if I look at Billy Munger's problems and what he got fined for. Yeah we'll be fined and it will be a high fine.

I think what we would like to see is to be able to work a little bit more with the EPA as Billy mentioned something similar to the OSHA program where they come in and do a non-punitive visit and tell us. It's very confusing. We do deal with an awful lot of chemicals and an awful lot of problems. We have storm water permits. We have all kinds of permits we need to get and we have spent, ourselves, this past year much time trying to get into compliance and get all the programs that we need to get, and every time we turn around there is another one.

We need a little more guidance, not a permit or another fine that we could have for not having some kind of paperwork done or some kind of training done. It's been a very enlightening learning experience the past couple of years.

Again, we have worked with the EPA. We have recently had a discussion with them and we are hoping that they will be positive to this non-communicative visit and help us a little bit more to understand what we need to do to be compliance.

SENATOR LEO BLAIS: Have you or the marine trades people received any of the environmental workbooks that were talked about so you know kind of what you have to watch for?

MR. DON DIVENZIO: We do when we go to those seminars.

SENATOR LEO BLAIS: Unless you went to the seminar, unless you went to the website you wouldn't get it.

MR. DON DIVENZIO: The majority of the marinas in this state didn't have the slightest idea of what was happening until just recently.

SENATOR LEO BLAIS: Okay. And has there been any indication from EPA that they are willing to do trainings for the marina owners about what they are supposed to be up to?

MR. DON DIVENZIO: Ken [unintelligible] has been involved with those negotiations. He said he started it and I'm not sure how

far it has gone. I am hoping it will be a positive end.

SENATOR LEO BLAIS: Okay. Were you able to fill out a comment form for us?

MR. DON DIVENZIO: I did.

SENATOR LEO BLAIS: Okay. Mr. Mendez will get that for you before you leave.

[CROSS TALK]

MR. DON DIVENZIO: And it's very scary to understand that these kinds of fines could be levied. They will tell you that you could get \$32,500 a day per incident and go back for years. Well, you can easily build up hundreds of thousands of dollars worth of fines.

If we are throwing oil in the water deliberately we can understand a fine like that, which we are trying hard to stay clean, you know, let's be a little more sensible about it, and \$100,000 to a marina is a lot of money.

[CROSS TALK]

SENATOR LEO BLAIS: I appreciate you taking the time to come down and share your comments with us. [Inaudible] for you. Thanks. Anyone else would want to have an opportunity to testify? Yes, sir?

MR. JOE ANTONIO: Hi. My name is Joe Antonio. I'm with the Rhode Island DEM. I'm with the Office of Technical and customer assistance. We used to have a small -- I used to be the head of the small business assistance program. We are now the only state in the nation that does not have that. It was an un-funded mandate.

But I want to speak a little bit about the marinas because we are working with the Coastal Resources Management Council on a self-certification that the marinas [unintelligible]. As a matter of fact, I will be going out probably this week with my boss. And what that entails is going through sort of a checklist with the marinas. They send in the form and they participate, we are going out there in a non-regulatory fashion, go down through a checklist to see what they have and what they don't have.

SENATOR LEO BLAIS: So this you are doing this with EPA?

MR. JOE ANTONIO: No. Well, not really we are doing it with the Coastal Resource Manager Council.

SENATOR LEO BLAIS: So, it's [unintelligible] and DEM and CRMC go through this checklist?

MR. JOE ANTONIO: Yes. It just, you know, it's just happening.

SENATOR LEO BLAIS: Do you provide this environmental workbook from EPA to the marinas?

MR. JOE ANTONIO: I haven't. Well, we have been commenting on putting together the checklist, but I don't have the workbook. Coastal Resources--

SENATOR LEO BLAIS: [Interposing] So, it's you and CRMC go in with the marina owners to do this checklist?

MR. JOE ANTONIO: Yes.

SENATOR LEO BLAIS: But, this environmental workbook that EPA's bible -- as EPA's bible, you are unable to provide that?

MR. JOE ANTONIO: I'm not providing it. To be honest with you I didn't put together the checklist and I am willing to bet that the checklist is probably formulated based on a guidance document such as that.

SENATOR LEO BLAIS: Okay. So, hypothetically if EPA wanted to send you 500 workbooks when you go out to these visits, you could also give them the EPA workbook?

MR. JOE ANTONIO: Sure absolutely.

SENATOR LEO BLAIS: Okay. And which department are you in at DEM?

MR. JOE ANTONIO: Office of Technical and Customer Assistance.

SENATOR LEO BLAIS: Okay. Sorry to interrupt you.

MR. JOE ANTONIO: No that is fine. One of the things I wanted to comment about with Mr. Munger it's unfortunate that the compliance officer that he had didn't have a little bit more knowledge on [unintelligible] regulations because as you are probably aware there is a statement of federal regulatory fairness act whereas if he -- his consultant found something he could report to us or EPA and say look we did a self-audit, self-inspection, nobody came in to do this, we did this ourselves. We are replying to you to let you know we found these items that were out of compliance and we are working on these

items to fix them. So, there is the federal and the state program in place to do that.

[CROSS TALK]

SENATOR LEO BLAIS: Have you done any of these reviews with marinas so far?

MR. JOE ANTONIO: No we are going to start literally this week. We are going to be going out partnering with CRMC to go out either this week or next week to go and just sort of a guinea pig just first crack at the apple here going on a list and sort of get an idea as to what, you know, kind of issues [inaudible].

SENATOR LEO BLAIS: Okay. And if I could interrupt you one more time. You said that Rhode Island is the only state that doesn't have--

MR. JOE ANTONIO: [Interposing] A small business assistance program. We had it up until about three or four years ago. That was a program that came out of the clean air act where we would help businesses with their air pollution problems.

In most states, that program sort of went outside of the area and went to multi media, meaning it went from area hazardous waste and wastewater. Rhode Island at the time had an operating permits advisory panel that didn't like the fact that we were helping the small businesses [unintelligible] out of the air issues. And we said, well that's kind of crazy because if we go in and just help them with air pollution issues, they are going to get the feeling that they are all set.

Then somebody from hazardous waste or waste water comes in to inspect them and then they say, well gee we had somebody here help us with the air pollution's, so it became, you know, apparent to us as we decided to go out and help them with air issues that some of these air issues emanated from hazardous waste issues. So, we really went in sort of to help them out with air hazardous waste and waste water compliance.

SENATOR LEO BLAIS: Where does the [inaudible] fundings [inaudible] for that?

MR. JOE ANTONIO: It came from operating permit fees, which is from the Office of Air Resources.

SENATOR LEO BLAIS: And do you have recollection of how much it was -- put that into place for an annual basis?

MR. JOE ANTONIO: I'm going to guess where there are

two people in the program maybe \$100,000 for two salaries and those fees are generated by polluters in the state. And, again, it's an unfunded mandate. It's mandated in the clean air act that every state have this program, but, you know, the funny mechanism is sort of arbitrary. They took it out of the that -- out of the [unintelligible] permit fees and then all of a sudden three or four years ago they just totally [unintelligible] the program.

So, we are not able to go out and help the businesses like we could before. However, with this program, this marina program where our office is taking on different environmental sectors [unintelligible] issues with environmental problems such as in the auto body industry, auto salvage, underground storage tank and now just recently marinas, and this is just happening.

SENATOR LEO BLAIS: So the EPA has put marinas on notice through the industry that they come on a call and watch out and you folks will be visiting to kind of go through a checklist that you believe was garnered from the enforcement document. Could you talk with Mr. Wells from the EPA?

MR. JOE ANTONIO: Larry has been in touch with our office on getting this thing going.

SENATOR LEO BLAIS: Yeah, but what I'm concerned with is what I heard today from two different people is that there is this nice environmental workbook from EPA that says here is everything we are worried about, if you're a marina, here is our workbook. But a) they don't pass it out and b) you guys are going out.

So, let's say for instance Mr. Munger didn't have it, and you visited his shop and you go through the checklist everything is a okay. Mr. Munger a clean bill of health, have a nice day. The EPA walks in the next day you don't have this, you don't have this, we really don't care that DEM has been here, we are the EPA here is a fine for a half million dollars. Is that -- could that happen?

MR. JOE ANTONIO: It could happen. In general the state's regulations are as tough if not tougher than EPA. So, I'm waiting to bet that the items on the checklist are based on only state regulations, but federal regulations, so they try to incorporate those as well.

So, again, EPA could have a standard on something -- Rhode Island's standard has to be as strict or if not stricter. Now, also there is nothing to prevent EPA from coming down arbitrarily to inspect Mr. Munger's facility. We can't prevent that that can certainly happen.

[CROSS TALK]

SENATOR LEO BLAIS: I think it's crucial and just so you know, I think it's also necessary that DEM if you are going to be doing these be able to provide this enforcement, this environmental document from EPA to make sure that we are not missing something so we are not recreating another one of these, but I really think you are doing a good thing with getting involved with CRMC and I appreciate your time coming out. Anything else you want to share with us?

MR. JOE ANTONIO: That is it.

SENATOR LEO BLAIS: Okay. Thank you so much.

MR. JOE ANTONIO: Thank you.

SENATOR LEO BLAIS: Anyone else who wants to testify? Lady in the front?

MS. ANNE SKORPUSKI: I just want to clarify some things that Joe said, so you understand what he is talking about.

SENATOR LEO BLAIS: Just introduce yourself in the mike please.

MS. ANNE SKORPUSKI: My name is Anne Skorpuski, I'm from Point Judith Marina. I believe what Joe is talking about the program and the checklist is the clean marina program that was just recently introduced to us.

SENATOR LEO BLAIS: Is this EPA or Rhode Island DEM?

MS. ANNE SKORPUSKI: This is the CRMC is sponsoring it. Clean marina, if you have ever been to Florida it's huge in Florida. The majority -- huge majority of the marinas in Florida are clean marina programs -- have clean marina programs.

It's a checklist that runs anywhere from do you have your original [unintelligible] to do you have dog poop bags on your property.

[CROSS TALK]

MS. ANNE SKORPUSKI: There is also -- they look for your storm water plan. They look to see if your bathrooms are clean, if you are providing hazardous waste.

SENATOR LEO BLAIS: Right. But do they ever tell you if you are doing everything inside you could apply for this no exposure permit?

MS. ANNE SKORPUSKI: This was the first time I heard of the no exposure permit.

SENATOR LEO BLAIS: So we are all learning something today?

MS. ANNE SKORPUSKI: Yes we are.

SENATOR LEO BLAIS: Okay. Thank you.

MS. ANNE SKORPUSKI: The booklet that you get when you do a clean marina program -- first you have to sign a pledge saying you want to be a clean marina. Then you get the checklist and you get the booklet. If you don't sign that pledge you don't get the checklist, you don't get the booklets, so you are just --

SENATOR LEO BLAIS: The EPA booklet or the CRMC?

MS. ANNE SKORPUSKI: The CRMC. It is strictly voluntary.

SENATOR LEO BLAIS: Okay. So, you sign the pledge...

MS. ANNE SKORPUSKI: You sign the pledge, you do the self-certification, you walk through your yard, you sign off on it and you mail it into CRMC. Mine went in the mail yesterday, the marina is very proud. We have worked very hard to, which we think were pretty -- 90 percent to 95 percent compliant and part of those checklist things are EPA driven. So, they are working hand in hand.

SENATOR LEO BLAIS: Well, it doesn't sound like 95 is good enough to the EPA?

MS. ANNE SKORPUSKI: No. As far as I'm concerned they haven't disseminated the information on their end. CRMC has worked hard, but I just wanted to clarify [unintelligible] the program.

SENATOR LEO BLAIS: There is nobody from either the CRMC side or we just heard from DEM if the big mallet, the big gun at your head is EPA. And you can't get their book unless you ask for it and you don't know you should have read the book until they show up at the door and DEM and CRMC are doing this clean marina piece, which may or may not be matching what the EPA is looking for.

It sounds like we need a little better coordination and I will assure you that we will start that process later on this afternoon, but I just need to understand if you are in agreement with the other two marina people that until they come knocking at the door you think you are doing a heck of a job.

MS. ANNE SKORPUSKI: Correct.

SENATOR LEO BLAIS: Okay. Thank you so much. Anything else you want to share with us this afternoon?

MS. ANNE SKORPUSKI: No. Thank you.

SENATOR LEO BLAIS: Okay. Anybody else who hasn't yet testified who wants to speak? Okay. Mr. Wells a second time.

MR. LARRY WELLS: I just want to be very brief and clarify one thing on -- what I mentioned before was the environmental management plan workbook and I said that it's a workbook to help a marina owner plan and track their environmental management activities.

The workbook is not based on regulations. It does not discuss what the regulations are. What it discusses is advice to a marina owner in terms of how you can plan and track your activities in such areas as training, establishing standard operating procedures, planning on an annual basis, monitoring your business so that you could hopefully be able to manage your environmental responsibilities, as well as you -- along with your day to day operational business. So, that's what the workbook is. I just wanted to clarify that.

SENATOR LEO BLAIS: Thank you. I appreciate that. Thank you so much. Anyone else who wants -- yes.

MR. THOMAS HICKS: Good afternoon. I figured I may as well come up here and say a couple of things since I have been at every reg fair hearing for the last seven years, right.

Good afternoon, my name is Thomas Hicks.

[CROSS TALK]

MR. THOMAS HICKS: I'm from the U.S. Department of Labor in Washington. I'm in the Office of Small Business Programs. I wanted to talk about a couple of points in general about our program and reemphasize a point that was made about our office getting involved in the early process of these comments and complaints.

Almost successful outcomes from small businesses have done. When we got involved before final determinations have been made by enforcement agencies. Because that is one set time where after the agency has said this is what we are going to do and the small business owner just put up their guards. We get -- we generally get called and everybody has a stand on where -- how far they are going to go and

where they are going to go.

And so -- and Mr. Lupovitz' position and situation he contacted our office in January probably just a couple of days after he got a [unintelligible] termination from the Wage and Hourly Division. And his concern was that they told him he had a week to decide whether the was going to pay or not.

[CROSS TALK]

MR. THOMAS HICKS: He can tell you that he got a little bit more than two days after we talked. I don't think he ended up writing a check for six or seven months after that.

And Joe we tried to help get involved and we did address his assertion that he believed that he was treated unfairly. And most of the times that is what we get from small business owners. Is somebody knocks on their door and says we want to do an evaluation here is the decision, and you need to make a decision tomorrow. And that is when we get involved and try to buy the small business owner some time to work out their positions and try to decide what they want to do in terms of -- in terms of going forward.

One of the other concerns that he made and he mentioned about the appeal and if he appealed what was going to happen to him. I mean, that raised some concerns and that was the first time I heard that someone at Wage & Hourly took that [unintelligible], so I'm not so sure about that.

But I just wanted to introduce myself and mention some of the concerns that he had -- he had raised. But we were able to get him more time to try to work out a position for him. In terms of the validity of his claim and whether those people were exempt or not that is another, you know, that is another issue.

SENATOR LEO BLAIS: Thank you. And we understand that is another discussion for another day, but if--

MR. THOMAS HICKS: Yeah that's another discussion, but I can tell you we can give one of our successful cases here at Rhode Island where a group of that has the same situation that your company had. They took a position that their brewers were exempt. They got their trade association involved because the trade -- and you mentioned a situation where the investigator had no experience about security firms. The trade association got involved, worked with the National Ombudsman and the brewers, and that firm was able to get exempt status for their brewers.

Because the trade association was a lot more familiar with the ₃₅

type of work that those brewers did, educate -- help educate some of the people in the Wage & Hourly Division regarding that issue, and the company was able to get their employees exempt. That was a similar situation, but all the facts and things like that were provided to wage an hour in our office and we were able to get the exempt status for that company.

Now, another thing that -- and I can't remember. I'm trying to remember because, you know, we get a lot of cases. This is not the only case we have in our office. Once a determination was made on the final amount, RIBI provided more factual information and the determination was reduced.

So, sometimes small business owners don't provide all the factual information at that time and when you talk about non-exempt and exempt it's a fact driven determination. If you don't give all the facts to the Wage & Hourly person at that time, they only can go by the facts that you give to them, you know, so you have that situation also.

And finally, my office is an advocate for small business owners. Thank you.

SENATOR LEO BLAIS: Thanks so much. And the lady in the back.

MS. PAT SLATE: I was never quite sure when the appropriate time [unintelligible], but since Tom has spoken. I'm Pat Slate with the Wage & Hour Division of U.S. Department of Labor. And as I said earlier, we are very pleased to be here. We know how important small businesses are to our nation's economy. And we know that you all struggle with a lot of regulations to make your business successful and we also know that you intend to comply with the law.

We want you to know that we have many, many resources available to you. One of our favorite resources is called the ELAW Advisors and I have some brochures that are out on the registration table. The ELAW stands for Employment Law Advisor for Workers in Small Businesses. And it is an interactive program on our website that allows you to learn about wage and hour issues and other Department of Labor issues perhaps pension or OSHA. Many different agencies have participated in this.

Our website is www.wagehour.dol.gov. And on this website, we have a full explanation of our programs. We have links to the various statutes and regulations that we enforce. We have a series of opinion letters that address particular issues that may not be that clear that have been submitted in writing and that carry the weight of law in terms of the answer.

Now, a rather new development on this website is you can actually submit a question on line and receive a confidential answer. We have this ELAW site. You can sign up to be notified anytime that our opinion letters or regulations are updated, and I myself have signed up for this. And I know that as soon as I get the official memorandum through work I am receiving an e-mail notification that there are changes on the website and now is the time to check them out.

We also have a technical assistance line, which is 1-866-4USWAGE and the operators at that number can direct you specifically to the Wage & Hour office that can help you or to the other state or federal agency if you are not quite certain who can be of assistance to you.

So, I urge you to call and visit our website and ask a lot of questions, and I will stay around for a few minutes afterwards if anyone didn't quite get that telephone number or website. Thank you.

SENATOR LEO BLAIS: Before we go to the other -- any of the other federal agencies who want to present to us, I want to just make a part of the record that we also received a comment from a company Will Foote Transport that was signed by Will Foote regarding an issue with the long-term agreements for government contracts we will make it part of the record, and a letter from John W. Furrh Associates signed by Jenny Quarmier [phonetic] relating to the Occupational Safety and Health Administration that we will also share with the OSHA people as well.

C-Tech of New Haven Connecticut, Inc., they were notified that [unintelligible] their application for the SBA Mentor Protégé Program was declined and they received further notice that resubmitting was not allowed signed by Dale [unintelligible] she is executive officer and Brian Claiborne, president of C-Tech of New Haven Connecticut, Inc., that we will also pass along.

And I wanted to also just read into the record one from my corporation, Pawtuxet Valley Prescription in [unintelligible] Rhode Island that is signed by myself as president of the corporation regarding an issue with CMS and timely filing of prescription drug claims under Medicare Part D and that [unintelligible] already communicated with Adele Pietrantonio who is the regional pharmacy person at the Region 1 office in Boston and we will get written documentation into the office with that as well.

Any of the other federal agencies want to share any information to the audience now is your chance. And I would like to publicly call on Sherri Carrera just to give us a little review of what her role is as the state advocate of the small businesses who are here as well.

[CROSS TALK]

SENATOR LEO BLAIS: And she was also very supportive in identifying that the hearing was going to be here today through the EEC lesson they have so if you are not -- you're a small business and you are not involved with them, get on their list, they are good people.

[CROSS TALK]

MS. SHERRI CARRERA: I'm Sherri Carrera. I also run a program called every company counts for Rhode Island Economic Development, and basically I am the one who gets all the rules and regulations that are about to be promulgated they come through my office. I do an analysis [inaudible] an impact on small business and then go back to the agency to see if they can come up with a less costly way of doing [unintelligible] regulation.

I am new in this role, very new, very green. But basically know that I am here. We actually have a booth on the [unintelligible] downstairs [unintelligible]. I am here for you, if you need anything call me, contact me. I am actually working with [unintelligible] right now on another issue. But I have [unintelligible] by coming up to me and letting me know that there's rules and regulations that are about to be promulgated and hopefully we can make a difference.

SENATOR LEO BLAIS: Thank you very much. Any other agency, entity want to come on up? Thank you for coming.

MR. JOE WYNNE: Thank you, Senator. My name is Joe Wynne, as I told you before, I'm from IRS and really IRS is here to help you, and people think IRS is the demon. But IRS is doing a lot of things to help the small business community. One of the things that we do is a lot of outreach events in my organization with both practitioners and industries. We have an issue resolution system where we are responsible for answering questions. But most importantly and one of the things we are doing right now is disaster relief assistance. There are three disaster sites identified up in Port Smith, New Hampshire and we are staffing those sites helping small businesses claim casualty losses.

SENATOR LEO BLAIS: Thanks so much. And is that through the Internet, phone call to get to you? How do people access your services?

MR. JOE WYNNE: Well, the easiest way is IRS.gov, but my name is Joe Wynne, 203-781-3133.

[CROSS TALK]

SENATOR LEO BLAIS: Okay. Anyone else?

MR. PATRICK GRIFFIN: I'm Pat Griffin, I'm the area director with OSHA. I would like to thank Bill for all the kind words you said about our compliance assistance program. I just want to talk about it briefly. I spent seven years doing compliance assistance work before I became the area director here in Rhode Island. And as you know that OSHA really means our savior has arrived is what it stands for. And under the compliance assistance program, that's really what it is. Please call us, whatever we can do to help you it is a non-enforcement program. We don't have cookies on our website where we find you by writing it.

It's a great program, we have a compliance assistance specialist in each office and we are recently -- probably by the end of this week we will have a new regional compliance assistance specialist. We have so much work in that area that we are hiring more compliance assistance people. So it's a great program and I hope you take advantage of it. Thank you.

SENATOR LEO BLAIS: Anyone else? Yes.

[CROSS TALK]

MR. RENE SANCHEZ: My name is Renee Sanchez and I'm a federal officer with the EEOC in Boston. Our jurisdiction encompasses all of the New England area, Maine, New Hampshire, Vermont, Connecticut, Rhode Island, all of the general areas.

One of the biggest concerns that the Commission does have is concerns for small businesses. We have certain initiatives that we actually go out and do considerable amounts of outreach. We also do youth at work programs where you have generally high school kids that are going out to the workforce. When you are hiring those types of individuals you may want to have this type of training.

It talks about the discrimination laws that we cover based on race, color, sex, religion, national origin, age and disability. And what we do is basically we do -- I do a lot [unintelligible] the outreach myself and several other people. We go out to the field. We go to major manufacturers, huge corporations down to six people. I mean, even people who have businesses dealing with cleaning swimming pools, so that's my next gig is to provide some assistance with what we cover, how we cover -- how we handle charge of a discrimination.

Just to let you know, if you are served with a charge from EEOC for a discrimination there is a process generally many of the cases that we do get we refer to a mediation process, which is a free process. It's

an invitation to both parties to come forward and basically discuss what happened because a lot of times there's a lot of misunderstandings and you can basically talk about it with a mediator, discuss the possibilities of resolving and basically [unintelligible] and pretty much resolve the case.

So, that is a good opportunity for small businesses to try to be accessible too. So, we provide outreach. We have customer specific training. We charge businesses anywhere one, two, three hours of businesses, corporations, attorneys, law firms, that type of thing. They are very interested in all aspects of discrimination.

I just gave a two hour training at a very large corporation to the guys that make the missiles, you know the [unintelligible], but they wanted a two hour customer specific training based on mental disabilities, the ADA, the American Disabilities Act, it's a very complex act.

So, if many people in the legal arena are very much confused by it, could you just imagine what the small business person is by the ADA. So, my telephone number direct line is 617-565-3203. You can call me any time you want to if you have any type of questions, I will be more than happy to help you out. If you need training for your small business we will be able to handle that.

In many of the cases that we small business training it's free, so that is a good idea to take advantage of it. And basically our website is www.eeoc.gov.

SENATOR LEO BLAIS: Thanks for coming. Anyone else? On behalf of Ombudsman Owens and Director Hayward of the Regional Office I want to thank you all for participating in this hearing. We will get these comments down to Washington by the end of the week and I will put them in the machine and we will get the answers for you as best we can. And again, if there's any comments or questions you have you can reach the Ombudsman's Office through the sba.gov/ombudsman and we appreciate you taking the time this afternoon to be with us.

This hearing is now concluded.

[END TAPE 1 SIDE A]